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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANCIS J. MAGUIRE, JR.

Appeal 2008-2097
Application 09/524,491
Technology Center 2600

Decided: May 30, 2008

Before THOMAS A. WALTZ, CATHERINE Q. TIMM, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

I. BACKGROUND

The invention relates to an imaging system, such as a virtual reality system, which includes a moveable headrest. The movable headrest allows the direction-of-view of displayed images to correspond to the direction of the viewer's head. Claims 1, 3, 7, 8 and 16 are illustrative of the subject matter on appeal:

1. Apparatus, comprising:
a support for supporting a user in viewing images in a standing, seated, or reclining posture; and
a movable headrest mounted on or with respect to said support, for moving with rotational movements with respect to said support and supporting a head of said user in executing said rotational movements while viewing said images from a changing direction.

3. The apparatus of claim 1, further comprising an actuator for moving said movable headrest.

7. The apparatus of claim 1, wherein said support is movable by an actuator.

8. Apparatus, comprising:
a sensor coupled to a movable headrest for supporting a user's head with respect to a support, responsive to head movements of the user with respect to said support, for providing a sensed signal having a magnitude indicative of differing directions-of-view corresponding to said head movements;
a reality engine, responsive to said sensed signal, for providing an image signal indicative of a sequence of images from differing directions-of-view selected according to said sensed signal and corresponding thereto; and
a display, responsive to said image signal, for providing said sequence of images for viewing by said user from said differing directions-of-view.

16. The apparatus of claim 1, wherein said rotational movements include left and right rotational movements.

The Examiner relies on the following prior art references as evidence of unpatentability:

Park	US 5,695,406	Dec. 9, 1997
Helman	US 5,791,735	Aug. 11, 1998

The Examiner made the following rejections:

1. Claims 1-15 under 35 U.S.C. § 102(b) as anticipated by Park; and

2. Claims 16-19 under 35 U.S.C. § 103(a) as obvious over Park in view of Helman.

For the anticipation rejection over Park, Appellant presents separate arguments for claim 1, claims 3 and 4 as a group, claim 7, and claim 8. (App. Br. 5-8). While Appellant discusses other claims under separate headings, no sufficiently distinct argument is made with respect to those other claims. (App. Br. 8-9). Therefore, we select claims 1, 3, 7, and 8 to represent the issues on appeal. *See* 37 C.F.R. § 41.37(c)(1)(vii)("When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone.")

For the rejection over Park in view of Helman, Appellant argues the rejected claims, claims 16-19, as a group. (App. Br. 9-10). We select claim 16 to represent the issues on appeal for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii).

II. DISCUSSION

Claim 1

We first address the issues relating to Appellant's arguments with respect to claim 1.

Appellant argues that the motion base 14 taught by Park cannot be the "support for supporting a user in viewing images in standing, seated, or reclining position" because:

(1) the motion base 14 as taught by Park is "for supporting the relaxation chair 12, and does not support the subject or user" (App. Br. 5);

(2) the ordinary and customary meaning of the term "support for supporting a user" as understood by one of ordinary skill in the art would be "providing direct support by itself to an object in question" (App. Br. 6);

(3) the Examiner's broad definition ignores "interpretive guidance provided by the specification" (App. Br. 6);

(4) Park uses the term "support" separately (i.e., the motion base 14 supports the relaxation chair 12 and the relaxation chair 12 supports a subject, which conflicts with the Examiner's broad interpretation (App. Br. 6); and

(5) the motion base 14 taught by Park is unsuitable for supporting a user. (App. Br. 6).

Appellant also understands the Examiner's Answer to assert that "both the motion base 14 and relaxation chair 12 correspond to the support recited in claim 1." (Reply Br. 3).

Appellant also argues that if relaxation chair 12 corresponds to the support in claim 1, then Park does not teach "a moveable headrest…for moving with rotational movements with respect to said support" as claimed

since the headrest 24 is "rigidly" attached to the relation chair 12. (App. Br. 6-7; Reply Br. 2).

The Examiner responds that, by virtue of the relaxation chair 12, "Park teaches a support for supporting a user in a reclining position" and that "in the reference [sic, ,] support is equivalent to the motion base and headrest is a combination of hood, headrest and relaxation base." (Ans. 6-7). The Examiner also points out that "in Description Applicant's [sic, Applicant] used Park reference as example." (Ans. 7).

The issue on appeal arising from the contentions of Appellant and the Examiner with respect to claim 1 is: has Appellant demonstrated that the Examiner reversibly erred in construing the term "support for supporting a user" broadly to read on the motion base 14 of Park? We answer this question in the negative.

The evidence of record supports the following Findings of Fact (FF):

1. Appellant's Figures 2-4 illustrate "a user reclining on a support in the form of a recliner," "a user standing on a support in the form of a human activity simulator," and "a user seated on a support in the form of a chair." (Spec. 3, ll. 21-30).

2. The Specification discloses that "[a]lthough the recliner 2a is shown as a stationary support, it can be of the type shown in US Patent No. 5,695,406 [i.e., Park]." (Spec. 5, ll. 32-34).

3. The Specification also states that "[a]lthough the chair 2c is shown as a stationary support, it can be of the type shown in US Patent No. 5,642,302, modified appropriately to be continuously positionable, as in the recliner of US Pat. No. 5,695,406 [i.e., Park]." (Spec. 6, ll. 21-25).

4. Park teaches that "[t]he relaxation chair supports a subject positioned thereupon." (Park, col. 2, ll. 27-28).

5. Park also teaches that "[a] motion base supports the relaxation chair." (Park, col. 2, l. 43).

6. Park teaches that immersion display hood 16 either "comprises an upper portion of relaxation chair 12" or "is attached to relaxation chair 12." (Park, col. 6, ll. 10-15).

7. In Park, immersion display hood 16 includes a headrest 24. (Park, col. 6, ll. 15-45).

8. Park also teaches that

> [i]n the embodiment of FIG. 1d, stanchions 15a and 15b are coupled to output shafts of electrical servomotors 50a and 50b, respectively, and move substantially axially in response to rotations of the output shapes of servomotors 50a and 50b. In other embodiments, each stanchion may be coupled to output shafts of actuators which are pneumatically or hydraulically powered and electro-mechanically controlled. Axial movements of one or more stanchions may be applied to relaxation chair 12 to produce vibrational inputs. In addition, limited translational and rotational movements of relaxation chair 12 may be accomplished by applying substantially axial movements of one or more stanchions to relaxation chair 12.

(Park, col. 9, ll. 51-63).

"[A]s an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the

applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

"Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision." *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994); s*ee also In re Bigio*, 381 F.3d 1320, 1324-25 (Fed. Cir. 2004) (Absent claim language carrying a narrow meaning, we only limit the claim based on the specification when those sources expressly disclaim the broader definition.).

"To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently." *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

Applying the preceding legal principles to the Factual Findings in the record of this appeal, we determine that the Examiner has not erred in construing the term "support for supporting a user" broadly to read on motion base 14 of Park.

The phrase "support for supporting a user" on its face can be read broadly. There is nothing in the claim language to suggest that the claim should require that the support "[provide] *direct* support by itself to an object in question," as suggested by Appellant. (App. Br. 6 (emphasis added)). Further, we decline to limit the scope of the claims as suggested by Appellant. Appellant provides no evidence that the ordinary and accustomed meaning of the term "support" would require a narrower reading. Likewise, Appellant does not direct our attention to any particular "interpretive guidance" from the Specification that would require a narrower reading of the term "support." Instead, we find the Specification describes

various embodiments of objects that can serve as a "support for supporting a user." (FF 1-3). The Specification does not provide any definition for the term "support," much less narrowly define the term "support for supporting a user" with sufficient "clarity, deliberateness, and precision" to exclude supports which *indirectly* support the user. *See Paulsen*, 30 F.3d at 1480. Under the circumstances, we decline to limit the claim to the specific embodiments described in the Specification. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) ("limitations are not to be read into the claims from the specification.") and *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005)(en banc) ("although the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments.").

We also find that Park's use of the term "support" does not preclude the Examiner's broad interpretation. While Park teaches the motion base 14 *directly* supports relaxation chair 12 and relaxation chair 12 *directly* supports the subject (FF 4-5), Park also teaches that motion base 14 *indirectly* supports the subject.

We find that the breadth of the term "support for supporting a user" in the claim reasonably reads on a support that either directly or indirectly supports a user. Thus, we agree with the Examiner that motion base 14 supports a user indirectly via relaxation chair 12. Thus, the Examiner's interpretation is not unreasonably broad.

Since headrest 24 is attached to relaxation chair 12 (FF 6-7), at least one of the axial, translational and/or rotational movements of relaxation chair 12 with respect to motion base 14 (FF 8) would cause headrest 24 to rotate with respect to motion base 14 as relaxation chair 12 rotates with

respect to motion base 14. In other words, because we agree with the Examiner that motion base 14 is a "support for supporting a user," Park teaches a "movable headrest…for moving with rotational movements with respect to said support," as recited in claim 1.

The Examiner did not reversibly err in construing the term "support for supporting a user" broadly to read on the motion base 14 of Park. Accordingly, we sustain the Examiner's rejection under 35 U.S.C. § 102(b) with respect to claim 1 and, consequently, claims 2, 5-6, and 9-15.

Claims 3-4

We next address Appellant's separate arguments with respect to claims 3 and 4.

Appellant argues that Park does not disclose a moveable headrest, but rather a "fixed" headrest. (App. Br. 7). Also, Appellant argues that Park does not teach "an actuator for moving the headrest, because the headrest in Park is fixed." (App. Br. 7). Appellant also argues that "[t]he actuators 15 disclosed by Park only act to move the relaxation chair 12, and are in no way configured to move the headrest 24 with respect to the relaxation chair 12." (App. Br. 7).

The Examiner responds that "hood 16 with headrest 25 [sic, 24] rigidly attached to the to the relaxation base 12 and [sic, is] moved relative to the motion base 14 (in the reference [sic, ,] support is equivalent to the motion base and headrest is a combination of hood, headrest and relaxation base)." (Ans. 7).

The issue on appeal arising from the contentions of Appellant and the Examiner with respect to claims 3 and 4 is: has Appellant demonstrated that the Examiner reversibly erred in finding that Park teaches "an actuator for

moving the headrest" as recited in claims 3 and 4? We answer this question in the negative.

The evidence of record supports the following additional Finding of Fact (FF):

9. The Specification states that

> the body of the user need not be supported by the support 2 but may be supported in some other way. In other words, the moveable headrest may equivalently be supported by a support that is different from the support provided for supporting the body of the user. For instance, the headrest might be wall-mounted and the user support positioned nearby to allow the head of the supported user to rest on the headrest in the same way as shown above.

(Spec. 6, ll. 1-9).

As indicated above, the claims are entitled to the broadest reasonable interpretation consistent with the Specification. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)("[d]uring examination, claims. . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.")

Applying the preceding legal principle to the Factual Findings in the record of this appeal, we determine that the Examiner has not reversibly erred in finding that Park teaches "an actuator for moving the headrest" as recited in claims 3 and 4.

Claims 3 and 4 call for "an actuator for moving said movable headrest." We are not inclined to read into the claim language that the movable headrest is required to move with respect to a chair, as argued by

Appellant. (App. Br. 7). In fact, the headrest, according to Appellant's Specification, might be supported by something other than a chair, such as being wall-mounted. (FF 9).

We are also not inclined to read into the claim language that an actuator must move the headrest directly. We find the breadth of the claim language reads on an actuator that moves the headrest either directly or indirectly.

Park teaches that axial movements of stanchions 15a/15b caused by electrical servomotors 50a/50b cause relaxation chair, and thus also headrest 24, to move axially, translationally and/or rotationally. (FF 8). Thus, Park teaches actuators (electrical servomotors 50a/50b) move headrest 24 via the fact that headrest 24 is coupled to relaxation chair 12, which is coupled to the stanchions 15a/15b moved by the servomotors 50a/50b. (FF 8). Thus, we agree with the Examiner that servomotors 50a/50b are "actuators" that move headrest 24.

The Examiner did not reversibly err in finding that Park teaches "an actuator for moving the headrest" as recited in claims 3 and 4. Accordingly, we sustain the Examiner's rejection of claims 3 and 4 under 35 U.S.C. § 102(b).

Claim 7

We next address Appellant's separate arguments with respect to claim 7.

Appellant argues that "it is apparent that the motion base 14 remains stationary at all times, and only the relaxation chair 12 is moved by the actuator 15"; thus, motion base 14 is not movable by an actuator 15. (App.

Br. 7). Therefore, Appellant argues that "Park does not disclose or suggest an actuator for moving the motion base 14." (App. Br. 7).

The Examiner does not respond to the Appellant's argument in the Answer. (See Ans.) However, the Examiner identifies the actuator as items 15, 50 and points to col. 9, ll. 46-63, in the rejection of claim 7. (Ans. 3).

The issue on appeal arising from the contentions of Appellant and the Examiner with respect to claim 7 is: has Appellant demonstrated that the Examiner reversibly erred in finding that Park teaches that the "support is moved by an actuator" as recited in claim 7? We answer this question in the negative.

Claim 7 calls for the "support is moved by an actuator." We are not inclined to read into the claim language a requirement that the entire support must move in order to find that the "support is moved". Rather, any movement of the support that is caused by an actuator would appear to fall within the scope of claim 7.

We disagree with the Appellant's argument that "it is apparent that the motion base 14 remains stationary at all times." (App. Br. 7). To the contrary, Park teaches that stanchions 15a/15b perform axial movements caused by electrical servomotors 50a/50b. (FF 8). In other words, Park teaches that the stanchions 15a/15b of motion base 14 are moved by actuators (i.e., electrical servomotors 50a/50b). Thus, the motion base 14 taught by Park is not completely stationary, but rather the motion base 14 moves to facilitate the movement of relaxation chair 12. (FF 8).

Thus, the Examiner did not reversibly err in finding that Park teaches that the "support is moved by an actuator" as recited in claim 7.

Accordingly, we sustain the Examiner's rejection of claim 7 under 35 U.S.C. § 102(b).

Claim 8

We next address Appellant's separate arguments with respect to claim 8.

Appellant argues that "the system discussed in Park is incapable of sensing head movements of the user" and that "the sensor must be able to sense 'head movements' and not just 'rotational movements' as asserted by the Office." (App. Br. 8).

The Examiner does not respond to the Appellant's argument in the Answer. (See Ans.) However, the Examiner rejects claim 8 citing col. 10, ll. 23-27, and explains "that in order to produce visual stimuli coordinated with rotational movement of relaxation base with headrest relative to the motion base [sic,] inherently [sic, there] must be [sic, a] sensor detecting those rotational movements." (Ans. 4).

The issue on appeal arising from the contentions of Appellant and the Examiner with respect to claim 8 is: has Appellant demonstrated that the Examiner reversibly erred in finding that Park inherently teaches "a sensor coupled to a moveable headrest" that is "responsive to head movements of the user" as recited in claim 8? We answer this question in the affirmative.

The evidence of record supports the following additional Findings of Fact (FF):

10. Column 10, lines 23-27 of Park recite that "[t]he motion base also produces limited translational and rotational movements of the relaxation chair. These limited translational and rotational movements,

when properly coordinated with visual stimuli, constitute motion cues which create sensations of pitch, yaw, and roll movements."

11. Park teaches that "[t]he immersive cyberspace system provides visual, audible, motion cueing, and vibrational input to a subject remaining in a neutral position, and also provides for subject control input." (Park, col. 2, ll. 18-21).

12. Park teaches that "[m]otion base 14 preferably includes a data port coupled to an external computer system executing a software program and creating the cyberspace environment." (Park, col. 9, ll. 35-37).

13. Park also teaches that "[a]n external computer, coupled to various components of the immersive cyberspace system, executes a software program and creates the cyberspace environment." (Park, col. 10, ll. 29-32).

"[A] prior art reference without express reference to a claim limitation may nonetheless anticipate by inherency." *In re Omeprazole Patent Litigation*, 483 F.3d 1364, 1373 (Fed. Cir. 2007). In general, a limitation is inherent if it is the "natural result flowing from" the explicit disclosure of the prior art. *Schering Corp. v. Geneva Pharms.*, 339 F.3d 1373, 1379 (Fed. Cir. 2003). "Inherency ... may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient." *Mehl/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999)(*quoting In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)).

Applying the preceding legal principles to the Factual Findings in the record of this appeal, we determine that the Examiner has reversibly erred in finding that Park inherently teaches "a sensor coupled to a moveable

headrest" that is "responsive to head movements of the user" as recited in claim 8.

We find that the Examiner has not clearly established that it naturally flows from the teachings of Park that a sensor *must* detect rotation movement "in order to produce visual stimuli coordinated with rotational movement of relaxation base with headrest relative to the motion base." We do not find the passage in Park cited by the Examiner to be sufficient evidence of inherency. (FF 10). In fact, we find that Park teaches that sensors are not necessarily required to provide this type of coordination, but rather, a computer may output coordinated control of the movement of relaxation chair 12 and the visual stimuli with or without sensing input. (FF 11-13).

Accordingly, we cannot sustain the Examiner's rejection of claim 8. Therefore, we reverse the Examiner's determination of anticipation under 35 U.S.C. § 102(b) with respect to claim 8.

Claim 16

We next address Appellant's arguments with respect to the separate rejection of claims 16-19 under 35 U.S.C. § 103(a) with reference to representative claim 16.

Appellant argues that "the motivation offered by the Office to combine the references is insufficient because it is irrelevant," since Park already provides a headrest 24. (App. Br. 9). Applicant also argues that, since the Applicant first referred to Helman to describe a suitable headrest embodiment of the present invention, the Office must have used impermissible hindsight in combining the teachings of Park and Helman using the Appellant's own disclosure. (App. Br. 9-10; Reply Br. 4). Thus,

according to Appellant, the Office has failed to show a teaching, suggestion or motivation to combine the references. (App. Br. 10; Reply Br. 4).

The Examiner responds that "combining the Helman reference with Park reference will give additional (relative to the movement of the motion base) movement capability 14 to the user." (Ans. 7). The Examiner also responds that the knowledge was within the level of ordinary skill in the art and was not gleaned only from the Appellant's disclosure. (Ans. 7-8).

The issue on appeal arising from the contentions of Appellant and the Examiner with respect to claim 16 is: has Appellant demonstrated that the Examiner reversibly erred in finding that the "rotational movements include left and right rotational movements," as recited in claim 16, is obvious over the prior art teachings? We answer this question in the negative.

A claimed invention is unpatentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the pertinent art. 35 U.S.C. § 103(a)(2000); *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 13-14 (1966). Factors to consider in determining obviousness include "'the scope and content of the prior art,' the 'differences between the prior art and the claims at issue,' and 'the level of ordinary skill in the pertinent art.'" *Dann v. Johnston*, 425 U.S. 219, 226 (1976) (*quoting Graham*, 383 U.S. at 17).

Lack of novelty is the ultimate or epitome of obviousness. *In re Francalossi*, 681 F.2d 792, 794 (CCPA 1982) ("Though the composition might have been obvious, though not anticipated, it cannot have been anticipated and not have been obvious. Thus evidence establishing lack of all novelty in the claimed invention necessarily evidences obviousness.").

Applying the preceding legal principles to the Factual Findings in the record of this appeal, we determine that the Examiner has not erred in finding that the "rotational movements include left and right rotational movements," as recited in claim 16, is obvious over the prior art teachings.

As discussed above, since headrest 24 is attached to relaxation chair 12 (FF 6-7), at least one of the axial, translational and/or rotational movements of relaxation chair 12 with respect to motion base 14 (FF 8) would cause relaxation chair 12 and headrest 24 to rotate about a vertical axis of motion base 14. For example, Park discloses that the movements of relaxation chair 12 provide the sensation of "pitch, yaw and roll." (FF 10). Thus, Park discloses the headrest 24 having rotational movements from left to right, as relaxation chair 12 rotates about a vertical axis of the motion base 14.

We note that the language of claim 16 does not call for any particular axis for the "left to right rotational movements." We determine that the rotational movements of the headrest 24 with respect to a vertical axis of the motion base 14 sufficiently disclose the limitation of claim 16.

We need not reach the combination of the teachings of Park and Helman to determine that claim 16 is obvious over the prior art of record, since we find that Park likewise anticipates claim 16. *See Francalossi*, 681 F.2d at 794.

Thus, the Examiner did not reversibly err in finding that the "rotational movements include left and right rotational movements," as recited in claim 16, is obvious over the prior art teachings. Accordingly, we sustain the Examiner's rejection of claims 16-19 under 35 U.S.C. § 103(a).

III. CONCLUSION

The totality of the evidence weighs in favor of the following conclusions:

(1) We sustain the Examiner's rejection of claims 1-7 and 9-15 under 35 U.S.C. § 102(b);

(2) We do not sustain the Examiner's rejection of claim 8 under 35 U.S.C. § 102(b); and

(3) We sustain the Examiner's rejection of claims 16-19 under 35 U.S.C. § 103(a).

IV. DECISION

The decision of the Examiner is affirmed-in-part.

V. TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal maybe extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

PL initial:
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